

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHAD D. CUMMINGS, # 238218,

Petitioner,

v.

Case Number: 11-cv-10239
Honorable George Caram Steeh

LLOYD RAPELJE,

Respondent,

**OPINION AND ORDER REASSIGNING PETITION FOR
WRIT OF HABEAS CORPUS AS A COMPANION CASE TO CASE
NUMBER 11-cv-10003, DIRECTING THE CLERK OF THE COURT TO
REFILE THE PLEADINGS IN CASE NUMBER 11-cv-10239 UNDER CASE NUMBER
11-cv-10003, AND DISMISSING THE CURRENT PETITION AS DUPLICATIVE**

I. INTRODUCTION

This is a habeas case filed under 28 U.S.C. § 2254. Petitioner Chad D. Cummings, a state prisoner confined at the Saginaw Correctional Facility in Freeland, Michigan, filed this *pro se* habeas petition challenging his convictions for (1) four counts of first-degree criminal sexual conduct, and (2) one count of third-degree criminal sexual conduct. Cummings has previously filed a habeas petition challenging these convictions, which remains pending before The Honorable David M. Lawson. *See Cummings v. Rapelje*, No. 11-cv-10003 (E.D. Mich.). A decision has not yet been rendered in that case. Pending before the Court is Cummings's instant habeas petition, in which he again seeks habeas relief from the convictions that he is challenging in his habeas petition before Judge Lawson.

For the reasons stated below, the Court will order that Cummings's instant habeas petition be reassigned as a companion case to his previously filed habeas petition in case number 11-cv-10003. The Court will dismiss the current petition as duplicative of that petition. The Court will

further order that the pleadings filed in case number 11-cv-10239 be refiled by the Clerk of the Court under case number 11-cv-10003.

II. DISCUSSION

Eastern District of Michigan Local Rule 83.11 governs the reassignment of companion cases, stating that “[c]ompanion cases are those in which it appears that: (i) substantially similar evidence will be offered at trial, or (ii) the same or related parties are present and the cases arise out of the same transaction or occurrence.” E.D. Mich. LR 83.11(b)(7). *See also Sims-Eiland v. Detroit Bd. of Educ.*, 184 F.R.D. 268, 269, n.1 (E.D. Mich. 1999). Additionally, in the interests of time and judicial economy, Cummings’s two habeas petitions should be consolidated into one action pursuant to Fed.R.Civ. P. 42. *See Bernal v. Helman*, 958 F. Supp. 349, 351-52 (N.D. Ill. 1997). Accordingly, the Court will reassign case number 11-cv-10239 to case number 11-cv-10003.

Finally, the Court will dismiss case number 11-cv-10239, because it is duplicative of case number 11-cv-10003. A suit is duplicative, and thus subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See Barapind v. Reno*, 72 F.Supp.2d 1132, 1145 (E.D. Cal. 1999). Cummings’s current habeas petition is subject to dismissal as being duplicative of his still pending first habeas petition, because both cases seek the same relief. *Id. See also Davis v. United States Parole Comm’n*, 870 F.2d 657 (6th Cir. March 7, 1989) (district court can properly dismiss a habeas petition as being duplicative of a pending habeas petition, where the district court finds that the instant petition is essentially the same as the earlier petition); *Christy v. Lafler*, No. 05-cv-74560-DT, 2005 WL 3465844 (E.D. Mich. Dec. 19, 2005) (same).

III. CONCLUSION

Accordingly, the Court **ORDERS** the Clerk of the Court to close case number 11-cv-10239 and reassign the case as a companion case to *Cummings v. Rapelje*, No. 11-cv-10003, which is pending before Judge Lawson.

IT IS FURTHER ORDERED that the Clerk of Court shall refile and docket in case number 11-cv-10003 the papers from case number 11-cv-10239.

SO ORDERED.

Dated: February 3, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on February 3, 2011, by electronic and/or ordinary mail and also to Chad Cummings, #238218, Saginaw Correctional Facility, 9625 Pierce Road, Freeland, MI 48623.

S/Josephine Chaffee
Deputy Clerk